

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
Kearney Public Schools)	File No. SLD-334309
Kearney, Nebraska)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: November 6, 2002

Released: November 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a request filed by Kearney Public Schools (Kearney), Kearney, Nebraska, seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Specifically, Kearney requests waiver of the filing deadline for Funding Year 2002 because of a delay in gathering data from a service provider.² For the reasons set forth below, we deny Kearney's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant

¹ Letter from Karl Yeutter, Kearney Public Schools, to Federal Communications Commission, filed June 13, 2002 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Waiver Request. Previously, this funding period would be referred to as Funding Year 5. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2002 and ends on June 30, 2003, previously would have been known as Funding Year 5, and is now called Funding Year 2002. The funding period which began on July 1, 2003 and ends on June 30, 2004 is now known as Funding Year 2003, and so on.

³ 47 C.F.R. §§ 54.501–54.503.

submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form 470.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must submit a completed FCC Form 471 application to the Administrator.⁵ The Commission's rules require that the applicant file the FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 2002 was January 17, 2002.⁷

3. Kearney concedes that it filed its FCC Form 471 after the filing window had closed, but attributes the delay to the timing of finalizing agreements with its services providers.⁸ Kearney states that the school system was negotiating new contracts for reduced-cost phone services.⁹ Kearney noted that bids were expected to close at the end of May 2002. Kearney submitted an FCC Form 471 in April before those bids closed.¹⁰ Kearney requests a waiver of the Funding Year 2002 waiver window deadline.

4. A waiver can be granted only if waiving the deadline is supported by a showing of good cause.¹¹ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.¹² We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application. As presently structured, the program does not allow applicants to individually determine the time frame that best suits them for the application process. Instead, the program has one main filing window, and all who would apply for discounts through this program must apply within that time-frame. We conclude that Kearney has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

⁴ 47 C.F.R. § 54.504(b).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁷ SLD website, What's New Archives (January 10, 2002)
<<http://www.sl.universalservice.org/whatsnew/012002.asp#011002b>>.

⁸ Waiver Request. *See also* FCC Form 471, Kearney Public Schools, filed April 12, 2002 (the envelope containing the entire application was postmarked April 12, 2002) (Kearney 471).

⁹ Waiver Request.

¹⁰ Kearney 471.

¹¹ *See* 47 C.F.R. § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Kearney Public Schools, Kearney, Nebraska, on June 13, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau